

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Gray Media Group, Inc.)	MB Docket No. 19-131
)	
Petition for Special Relief for Modification of the)	CSR-8977-A
Television Market of Station WCJB-TV with)	
Respect to DISH Network and DIRECTV)	

To: Chief, Media Bureau

OPPOSITION TO PETITION FOR SPECIAL RELIEF

Cox Media Group, LLC (“Cox”), parent company of the licensee of station WFTV(TV), Orlando, Florida, pursuant to Sections 76.7(b)(1) and 76.59 of the Commission’s rules, 47 C.F.R. §§ 76.7(b)(1), 76.59, hereby opposes the above-captioned market modification petition submitted by Gray Media Group, Inc. (“Gray”) on behalf of station WCJB-TV, Gainesville, Florida.¹ Through its Petition, Gray seeks, *inter alia*, to add Marion County to the Gainesville designated market area (“DMA”) for purposes of satellite carriage. Marion County is in the Orlando-Daytona Beach-Melbourne DMA (the “Orlando, Florida DMA”).² As shown below, the Media Bureau should deny or dismiss Gray’s Petition, because it contains material errors of

¹ *Gray Media Group Inc.*, Petition for Special Relief, MB Docket Nos. 19-131 (filed May 2, 2019) (“Petition”).

² As discussed *infra*, both WFTV(TV) and WCJB-TV are ABC affiliates. WFTV(TV) is carried via satellite in Marion County. Hence, were the Media Bureau to grant the Petition and WCJB-TV too were carried via satellite in Marion County, WCJB-TV potentially would compete directly with WFTV(TV) for satellite viewership there. For that reason, Cox was served with a copy of the Petition per Section 76.7(a)(3), which mandates service on, *inter alia*, any station licensee or other interested person “who is likely to be directly affected if the relief requested is granted.” 47 C.F.R. § 76.7(a)(3). Accordingly, Cox has standing to oppose the Petition.

fact and law and does not comply with the evidentiary requirements in Section 76.59(b) of the Commission's rules.³ Moreover, even if the Petition satisfied applicable requirements, WCJB-TV would still be subject to the "substantial duplication" exceptions in Section 338(c)(1) of the Communications Act, and thus, satellite carriers would be entitled to deny it carriage in Marion County.⁴

I. GRAY'S FAILURE TO SUBMIT VIEWERSHIP DATA SHOULD WEIGH AGAINST A GRANT OF THE PETITION.

Under the fifth market modification factor (the "viewership factor"), the Commission must take into account "evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors" in Marion County.⁵ On this point, Section 76.59(b)(6) of the Commission's rules mandates that a petitioner submit "[p]ublished audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records."⁶ Submission of such information (or any of the other information required by Section 76.59(b)) is not discretionary – under Section 76.59(c), a petitioner who fails to include it risks dismissal of its petition.⁷

³ 47 C.F.R. § 76.59(b).

⁴ 47 U.S.C. § 338(c)(1).

⁵ *Id.* § 338(l)(2)(B)(v).

⁶ 47 C.F.R. § 76.59(b)(6).

⁷ *Id.* § 76.59(c).

Gray has submitted no ratings data for WCJB-TV in Marion County. It tries to justify this by noting that it subscribes to Comscore for its ratings information, which “cannot provide ratings data for a station if it is not carried on satellite.”⁸ Gray instead cites the support the Petition has received from certain community leaders, advertisers, and viewers, and claims this is “sufficient evidence that the Station continues to have strong viewership in [Marion County].”⁹ In the alternative, Gray asks the Commission to waive the requirement that it provide ratings information for Marion County.¹⁰

The Commission’s rules require quantitative data rather than the self-selected anecdotal material offered by Gray. According to Nielsen, Marion County has 140,950 TV households. The fact that a select group of community leaders, advertisers, and viewers have expressed interest in having WCJB-TV carried via satellite in Marion County does not speak to how many of those 140,950 TV households have actually been watching the station. Absent ratings data, such evidence is not a reliable indicator of “strong viewership,” or any other level of viewership. And, while Section 76.59(b)(6) permits reliance on “other specific audience indicia, such as station advertising and sales data or viewer contribution records,” Gray has not included such information in the Petition. Furthermore, even if the Media Bureau were to waive Section 76.59(b)(6)’s requirement that Gray submit ratings data, it remains obligated by statute to make a

⁸ Petition at 15.

⁹ *Id.* at 16.

¹⁰ *Id.* Gray cites *Victory Television Network, Inc.* 32 FCC Rcd 7389, 7399-7400 ¶ 25 (MB 2017), for the proposition that the Commission will consider “other indicia of viewership” where the petitioning station does not subscribe to Nielsen. Petition at 15-16 n. 53. In *Victory*, however, the petitioning station submitted substantial donor contribution information that identified the percentage of donations originating in the communities the station was seeking to add to its market. As noted *infra*, no such indicia of viewership is provided with the Petition.

finding as to whether Gray has satisfied the viewership factor.¹¹ Since Gray has submitted no specific viewership information that would provide reliable indicia of WCJB-TV's viewership, the Media Bureau has no choice but to find that Gray has not satisfied the viewership factor and that this should weigh against a grant of the Petition.¹²

II. THE PETITION GROSSLY UNDERSTATES WFTV(TV)'S COVERAGE OF NEWS AND EVENTS OF INTEREST TO VIEWERS IN MARION COUNTY.

Under the fourth statutory market modification factor (the "other local stations" factor), the Media Bureau must evaluate whether the Orlando, Florida DMA stations already provide news coverage of issues of concern to Marion County or provide carriage or coverage of sporting

¹¹ 47 U.S.C. § 338(l)(2)(B)(v).

¹² See *Panola County, Texas*, Memorandum Opinion and Order, MB Docket Nos. 18-337 & 18-338, DA 19-151, ¶ 30 (MB, rel. Mar. 6, 2019) ("*Panola County*"). There are other evidentiary flaws in the Petition. Specifically, Gray's noise-limited signal contour map for WCJB-TV (see Petition, Exhibit G) does not appear to identify the location of DISH's and DirecTV's satellite receive facilities, as required by Section 76.59(b)(2). 47 C.F.R. § 76.59(b)(2). While Gray has requested a waiver of the requirement that its contour map identify the location of cable headends, it has not requested such a waiver with respect to satellite receive facilities. Petition at 12 n.41. Gray also has not submitted the map required under Section 76.59(b)(1). 47 C.F.R. § 76.59(b)(1). In addition, Section 76.59(b)(3) requires Gray to submit available data on shopping and labor patterns. *Id.* § 76.59(b)(3). The Petition includes no information as to, for example, whether viewers in WCJB-TV's home county (Alachua County) travel to Marion County to shop, or vice versa. As to labor patterns, Gray cites U.S. Census Bureau data indicating that 2,800 Marion County residents commute to Alachua County, and that more than 2,100 Alachua County residents commute to Columbia and Marion Counties combined. Petition at 11-12. Particularly given that Marion County has over 140,000 TV households, this is hardly compelling evidence of a meaningful labor nexus between Marion and Alachua Counties.

It is also unclear whether Gray served the Petition on all potentially affected parties as required under Section 76.7(a)(3). 47 C.F.R. § 76.7(a)(3). For instance, according to Gray's Certificate of Service, WFTV(TV) was the only Orlando, Florida DMA station served with the Petition. Yet, if the Petition is successful, WCBJ-TV would potentially compete for satellite viewership with *all* Orlando, Florida DMA stations, and thus those stations presumably should have been served.

and other events of interest to Marion County.¹³ Gray broadly states that Marion County “receives limited local programming” from Orlando DMA stations, but only cites a single viewer letter as support for that proposition.¹⁴ Gray provides no analysis or discussion of the Orlando DMA stations’ actual programming. In other words, Gray makes no meaningful showing on this point.

In fact, WFTV(TV) has provided news coverage regarding Marion County for years. Indeed, the station views Marion County as one of its major sources of news in the Orlando DMA, and it covers Marion County news extensively. WFTV(TV)’s news crews are in Marion County multiple times a week, and the station always places Marion County news in its seven daily newscasts. Also, for at least twenty years, the WFTV(TV) Eyewitness News department has assigned a full-time reporter and photographer to the Marion County beat, and the station often leads its 10:00 pm and 11:00 pm newscasts from Marion County locations. Examples of Marion County news stories aired by WFTV(TV) just within the past few weeks are described in Exhibit A hereto.

Further, in addition to its extensive coverage of Marion County news, WFTV(TV) devotes resources to the following issues of particular interest to viewers in Marion County, demonstrating its commitment to serving its viewers and the communities in the County:

- Special Marion County weather graphics in all WFTV(TV) newscasts and weather reports;
- Assignment of a special news team to cover hurricanes and severe weather in Marion County, to ensure that the station’s viewers in that area are safe;
- Election coverage of local and statewide campaigns that are relevant to Marion County viewers;

¹³ 47 U.S.C. § 338(l)(2)(B)(iv).

¹⁴ Petition at 14.

- Coverage of news stories emanating from The Villages, which is located in Marion County and is one of the largest senior living facilities in the world;
- A focus on covering the growing city of Ocala, the county seat of Marion County; and
- Inclusion of Marion County as a key part of the station’s annual Back-to-School campaign in August, in which the station educates viewers about getting their children back to school on time and safely.¹⁵

In sum, insofar as WFTV(TV) is concerned, there is no merit to Gray’s suggestion that Orlando, Florida DMA stations are not committed to providing coverage of news and other issues of interest to Marion County viewers.¹⁶ Gray thus should receive no credit under the “other local stations” factor.

III. THE MEDIA BUREAU SHOULD NOT ASSIGN ANY WEIGHT TO THE “ACCESS TO IN-STATE STATIONS” FACTOR IN THIS CASE.

Under the third market modification factor (the “access to in-state stations” factor), the Media Bureau must determine whether the proposed market modification would promote consumers’ access to television broadcast station signals that originate in their state of residence.¹⁷ Gray claims that this factor “weighs heavily in favor of the [P]etition.”¹⁸

¹⁵ Marion County is also one of eight Florida counties receiving books from the “WFTV and 9 Family Connection” program. And, WFTV(TV) has partnered with the ABC Network and their Magic of Storytelling campaign in conjunction with the UPS Stores and their exclusive Toys for Tots literacy programs. The UPS Stores will be donating 500 books to the Marion County School District within the next month. These books, which are designated primarily for underserved populations, will be used for in-school reading and summer reading programs.

¹⁶ All information provided herein regarding WFTV(TV)’s coverage of news and events of interest to viewers in Marion County is supported by the attached Declaration of Paul J. Curran, Jr., Market Vice President, Cox Media Group Orlando. See Exhibit B.

¹⁷ 47 C.F.R. § 338(l)(2)(B)(iii).

¹⁸ Petition at 13-14.

Gray is wrong. This is not an “orphan county” case, in which in-state satellite subscribers have been assigned to a DMA in a neighboring state and thus cannot receive in-state television stations. In those situations, the Media Bureau has given the “access to in-state stations” factor the “greatest possible weight.”¹⁹ By contrast, Marion County satellite subscribers live in the Orlando, Florida DMA and thus already have access to Florida stations, and will continue to have such access regardless of whether the Petition is granted. Under these circumstances, access to in-state stations is a non-issue. Therefore, it would make no sense for the Media Bureau to assign *any* decisional weight to the “access to in-state stations” factor in this matter.

IV. EVEN IF THE PETITION WERE MERITORIOUS, WCJB-TV WOULD REMAIN SUBJECT TO NON-CARRIAGE UNDER THE SUBSTANTIAL DUPLICATION EXCEPTIONS IN SECTION 338(C)(1) OF THE COMMUNICATIONS ACT.

In response to an argument made by DIRECTV (see Petition, Exhibit A at 2), Gray contends that, if its Petition is granted, it would be exempt from the “substantial duplication” exceptions in Section 338(c)(1) of the Communications Act, which are implemented through Section 76.66(h) of the Commission’s rules.²⁰ Under Section 338(c)(1), satellite carriers are not required to carry upon request “the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single

¹⁹ *Stephens County, Georgia*, Memorandum Opinion and Order, MB Docket No. 19-256 *et al.*, ¶ 26 (MB, rel. Apr. 4, 2019). *See also Panola County, Texas* ¶ 27.

²⁰ 47 U.S.C. § 338(c)(1); 47 C.F.R. § 76.66(h).

local market that is affiliated with a particular television network unless such stations are licensed to communities in different states.”²¹

The Commission has already rejected Gray’s reading of Section 338(c)(1). In its comments in the Commission’s rulemaking implementing Section 102 of the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (“STELAR”), Gray argued that “the ‘substantial duplication’ exceptions to the satellite must-carry rules should not apply to stations in communities that have been added to their markets via the market modification process. If [they] did, satellite operators likely would deny network-affiliated stations carriage in such areas if they already carry an affiliate of the same network from the same state.”²² The Commission held otherwise:

We also disagree with Gray’s argument that the “substantial duplication” exceptions to the satellite mandatory carriage rules should not apply to stations in communities that have been added to their markets via the market modification process. *Section 338(c)(1) speaks clearly on this point in permitting but not requiring a satellite carrier to carry more than one network affiliate licensed to the same state.*²³

Other Commission precedent confirms that Gray’s reading of Section 338(c)(1) is incorrect. Ironically, Gray need look no further than the Cable Services Bureau’s 1995 decision granting WCJB-TV’s market modification petition to add 26 communities in Marion County for

²¹ 47 U.S.C. § 338(c)(1).

²² Comments of Gray Television, Inc., MB Docket No. 15-71, at 8 (filed May 13, 2015). *See also* Petition at 6 (“DIRECTV’s interpretation of “duplicate signals” would moot the results of any market modification process involving a network affiliated station and two DMAs in the same state.”).

²³ *Amendment to the Commission’s Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406, 10427 n.146 (2015) (citations omitted) (emphasis added).

purposes of cable carriage.²⁴ There, the Cable Services Bureau stated that its decision was “subject to all generally applicable limitations on signal cable carriage rights, including copyright liability, channel capacity, *and program duplication.*”²⁵ The Cable Services Bureau’s decision also puts to rest any notion that the addition of communities via market modification is a *de facto* guarantee of carriage in those communities:

[T]he addition of communities to a station’s ADI may guarantee it cable carriage and specific channel position rights, or simply provide the system operator with an expanded list of must-carry signals from which to choose, i.e., when it has used up the channel[s] mandated for broadcast signal carriage, *or determined which of duplicating stations are entitled to carriage priority.*²⁶

Lastly, Gray’s position does not account for the fact that, by virtue of market modification, a county may be part of more than one DMA for purposes of the Commission’s signal carriage rules.²⁷ In this case, for example, were the Commission to grant the Petition, Marion County would be deemed part of the Orlando, Florida DMA and the Gainesville DMA. Thus, both WCJB-TV and WFTV(TV) would be deemed local signals in Marion County. Logically, then, since the purpose of the substantial duplication exceptions is to ensure that

²⁴ *Diversified Communications*, Memorandum Opinion and Order, 10 FCC Rcd 4998 (CSB, 1995).

²⁵ *Id.* at 5001 ¶ 15 (emphasis added).

²⁶ *Id.* at 4999 ¶ 7 (emphasis added). Thus, application of the substantial duplication exceptions to WCJB-TV would not, as Gray appears to suggest, be tantamount to a statutory prohibition of the Petition. *See* Petition at 6. The exceptions do not preclude WCJB-TV or any other Florida station from petitioning to add Florida counties to their markets. Where such petitions are successful, however, the petitioning station is treated like any other local signal in the added counties and remains subject to the Commission’s limitations on local signal carriage, including the substantial duplication exceptions.

²⁷ 47 C.F.R. § 76.59(a). *See also* Petition at 4-5 (contending that the substantial duplication exceptions should not apply where the duplicating stations are licensed to different DMAs).

satellite carriers are not required to carry duplicative local stations, WCJB-TV would be subject to non-carriage in Marion County, since both WCJB-TV and WFTV(TV) would be local, duplicative network affiliates there.²⁸ Conversely, failure to apply the substantial duplication exceptions in this case would force satellite carriers to carry duplicative local network affiliates, defeating the point of the rule.

* * *

In sum, the Petition should be given negative weight or little to no enhancement credit under the third, fourth and fifth market modification factors, and fails to satisfy the mandatory evidentiary requirements of Section 76.59(b) of the Commission's rules. The Media Bureau therefore should deny or dismiss the Petition. And, even if the Petition is granted, WCJB-TV would remain subject to the substantial duplication exceptions in Section 338(c)(1) of the Communications Act.

Respectfully submitted,

COX MEDIA GROUP, LLC

By: /s/
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May 28, 2019

²⁸ Moreover, the case law Gray cites as supporting authority for its position is inapposite. For example, Gray cites to a portion of the Commission's *STELAR Market Modification Report and Order* that does not address the substantial duplication exception. Petition at 6 n.16

EXHIBIT A

Sample List of WFTV(TV) Marion County News Stories

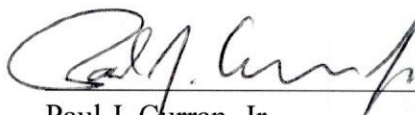
4/22/19	Garage fire
4/22/19	4 shootings in Ocala
4/25/19	Armed robbery suspect search
4/26/19	Winghouse murder conviction
4/30/19	Kidnapping arrest
5/3/19	Internet café robbed
5/5/19	Tornado touches down
5/5/19	No tornado warning given
5/5/19	Fatal fire in Ocala
5/6/19	Action 9 helps man recover thousands due to generator problem
5/6/19	Police search for drive by shooter
5/10/19	Marion Co. police dog catches suspect
5/11/19	4 high school seniors have perfect attendance
5/13/19	Authorities search for missing woman
5/15/19	Hepatitis cases on the rise
5/16/19	Man leads deputies on high-speed chase
5/17/20	School employee accused of touching child
5/20/19	Search for hit and run driver on I-75
5/20/19	Advent Health opens pediatric unit in Ocala
5/20/19	Massive alligator caught in Ocala

EXHIBIT B

DECLARATION

I, Paul J. Curran, Jr., Market Vice President, Cox Media Group Orlando, declare under penalty of perjury that the facts set forth in the foregoing Opposition to Petition for Special Relief of Cox Media Group, LLC are true and correct to the best of my knowledge and belief.

May 28, 2019

A handwritten signature in black ink, appearing to read "Paul J. Curran, Jr.", written over a horizontal line.

Paul J. Curran, Jr.

CERTIFICATE OF SERVICE

I, Vernell Garey, hereby certify that a true and correct copy of the foregoing
Opposition to Petition for Special Relief was sent via first-class mail on this 28th day of May,
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Vernell Garey

Date: May 28, 2019